IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

Crl.Rev.Pet.No. 3148 of 2007()

CRA.179/2004 of ADDITIONAL SESSIONS COURT (ADHOC)-II, KOLLAM
CC.270/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA

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REVN. PETITIONER: APPELLANT/ACCUSED:

A.M. ILLIYAS, S/O. ABDUL KHADER,
SHEEBINA MANZIL, T.B. JUNCTION, PARAKODE, ADOOR.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE:

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1. C. SIVARAMA PILLAI,
POURNAMIYIL PANAVELI, VETTIKKAVALA VILLAGE,
KOTTARAKKARA.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3148 OF 2007

Dated this the 24th day of August, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.270/02 on the file of the J.F.C.M.-I, Kottarakkara challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner further contended that eventhough the correct address of the accused is shown in Ext.P4 statutory notice, in the envelope in which the notice was enclosed a different address was shown with the place stated as Koodal instead of Adoor and it was returned unserved with the endorsement that it was unclaimed. This according to the counsel, is not a proper notice which is a sine qua non for a prosecution under section 138 of the NI Act.

5. It may be true that the address shown in Ext.P4 notice and the address on the envelope in which the notice was sent are different. But then, the parties are not strangers and it was not even suggested to PW1 that the address written on the envelope in which Ext.P4 notice was enclosed was wrong address. Even without putting this to PW1, it was not permissible for the accused to raise the above point, particularly when the said point was not seen urged before the lower appellate court. I, therefore, do not find any merit in the submission.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3)

Cr.P.C. a sum of Rs.2,00,000/- (Rupees two lakhs only) within five months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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